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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,816	08/08/2006	Michael A. Roes	8042-002-US	6681
32301 7590 09/18/2008 CATALYST LAW GROUP, APC 9710 SCRANTON ROAD, SUITE S-170 SAN DIEGO, CA 92121				
EXAMINER				
RICHMAN, GLENNE				
ART UNIT		PAPER NUMBER		
3764				
MAIL DATE		DELIVERY MODE		
09/18/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/597,816

**Applicant(s)**

ROES, MICHAEL A.

**Examiner**

/Glenn Richman/

**Art Unit**

3764

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 September 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-10 and 12-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,3-10 and 12-21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 6-10, 12-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanida in view of Shea.

Tanida discloses a biometric input device exposed on an exterior of a housing 2A, the biometric input device for biometric identification of a user col. 4, lines 23 – et seq., an electronics component electrically connected to the biometric input device fig. 2; a communication device electrically connected to the electronics component fig. 2, a plurality of user profiles fig 7A, 7B.

Tanida does not disclose the profiles contain target data.

Shea discloses an exercise device having profiles that contain target data col. 12, lines 64 – et seq.

It would have been obvious to use Shea's target data with Tanida's device, as it is well known as taught by Shea, to use target data for giving an exerciser a goal to reach.

Tanida further discloses a means for updating the plurality of user profiles with measurement data measured by the weight device col. 3, lines 18-23.

Tanida discloses a platform for obtaining measurement information from a user and to obtain a biometric input from said user when said user is in a position to deliver said measurement information col. 1, lines 53 - et seq., said biometric input device is located on the weight device such that when a user is using said weight device both the measured information and the biometric input are obtained while the user is in a single position (fig. 1), said biometric input device is located on the platform of said weight device allowing said biometric input device to obtain biometric input from the same user position as said weight device will obtain measured information fig. 1, said biometric input device obtains biometric input and communicates said biometric input to the electronics component for screening against a plurality of user profiles stored on said electronics component col. 4, lines 6 – et seq., a plurality of user profiles are identified and secured using biometric input received from said biometric input device col. 4, lines 6 – et seq.

Shea further discloses the measurement data is presented to the user in the form of trends col. 12, lines 64 – et seq., a means for comparing the target data with the measurement data col. 12, lines 64 – et seq.

Tanida further discloses the electronics component further comprises means for creating, a means for accessing and a means for editing a plurality of user profiles col. 4, lines 23 – et seq., said communication device is a visual indicator fig. 1, said communication device is an LCD .

The method claims 14-20 are inherent in the corresponding apparatus claims and are rejected for the reasons above.

As for claim 21, Shea discloses custom data can be loaded to and from the current user's profile, and wherein the custom data comprises physical attributes, trends and target goals col. 12, lines 64 – et seq.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanida and Shea in view of Osten.

Tanida discloses further comprising a platform to accept said user's feet for obtaining measured information fig. 1

Tanida does not disclose said biometric input is a toe print.

Osten disclose a toe print as biometric data (col. 7, lines 34-41).

It would have been obvious to use Osten's toe print sensor with Tanida's device, as it is well known to use a toe print, as taught by Tanida, for identifying a user.

Osten further discloses said biometric input device further comprises a scanner component (col. 7, lines 34-41).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/  
Primary Examiner  
Art Unit 3764